

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARDISAM, INC.,
a Wisconsin corporation,

Defendant.

ORDER

07-cv-0405-bbc

On November 13, 2007, this court received a letter from trial attorney Roger Gural from the Department of Justice's Office of Consumer Litigation inquiring why the court scheduled this case for a jury trial in the absence of an actual request from either party. When Attorney Gural pointed this out to defendant's attorney, he responded that defendant believed this matter should be tried to a jury. That is good enough for this court.

Obviously if neither side had a jury right, then a jury trial would be inappropriate. On the other hand, if a party neglects to request a jury trial prior to the pretrial conference, but later changes its mind, the court's routine is to allow the late request absent prejudice to opposing parties. The point is not to glorify form over substance: the same trial will proceed with the same evidence and the same judge; the difference is that a jury will be the factfinder, not the court. If the government has some actual reason to oppose a jury trial in this case other than

the fact that the defendant did not ask for one at the outset, then the government should promptly advise the court. Absent that, however, the court will allow a jury trial in this case.

Entered this 4th day of December, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER

Magistrate Judge